

## REMARKS

The Applicant has filed the present Response in reply to the outstanding Official Action of January 12, 2005, and the Applicant believes the Response to be fully responsive to the Official Action for reasons set forth below in greater detail.

At the onset, the Applicant would like to thank the Examiner for indicating that Claims 2-10 and 12-16 have patentable subject matter and would be allowed if rewritten in independent form including all of the limitations from the base claim and all intervening claims. However, since the Applicant disagrees with the Examiner's rejection of the base claim, no such amendment is needed at this time.

Claims 1, 11, and 13 have been amended herewith to correct several minor editorial errors in the claims. These amendments overcome the Examiner's objections to the claims. No new matter has been added by the minor editorial corrections.

In the outstanding Official Action the Examiner rejected Claims 1 and 11 under 35 U.S.C. § 102(e) as being anticipated by Ogino, United States Patent No. 6,813,309 B1. Applicant respectfully disagrees with the Examiner's rejection and traverses with at least the following analysis.

Applicant submits that Ogino is not a valid § 102(e) prior art reference. Specifically, in the rejection, the Examiner cited the new § 102(e) statute that was enacted by the American Inventors Protection Act (AIPA). The revised version supercedes all prior versions of § 102(e) with one exception. The exception is that when a potential reference is based upon an international application filed prior to November 29, 2000, the old rule governs. Therefore, the new rule only applies when an international application's filing date is on or after November 29, 2000. (PCT is an international

application for the purposes this statute). A reference based upon a PCT application that was filed prior to November 29, 2000 is subject to the former version of § 102(e).

Former § 102(e) reads:

The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or *on an international application by another who has fulfilled the requirements of paragraphs (1)(2), and (4) of section 371(c) of this title before the invention thereof by the application for patent.* (Emphasis added).

The available § 102(e) date for a reference filed before the effective date of the new § 102(e) is the § 371 date. Ogino was filed as a PCT application on June 23, 1999. The PCT entered U.S. national phase on January 3, 2001 which is the § 371(c)(1),(2), and (4) date. Therefore, the § 102(e) date of the reference is January 3, 2001. The instant application was filed in the United States on November 30, 2000, which is prior to the reference's § 102(e) date. Thus, under the former version of § 102(e) (the version which applies), Ogino is not a prior art reference under § 102(e).

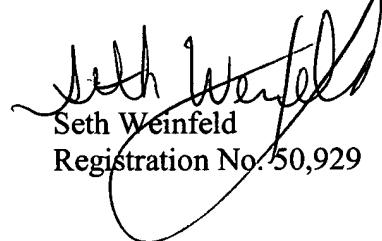
Additionally, Ogino is not a § 102(a) reference. The international publication date of the reference is January 13, 2000. This instant application has a foreign priority date of November 30, 1999, which is before the publication date of the potential prior art reference. Accordingly, Ogino cannot be used as the § 102 (a) reference.

Based upon the foregoing reasons, the Applicant respectfully requests the Examiner to withdraw the rejection of Claims 1 and 11 pursuant to 35 U.S.C. § 102(e).

In conclusion, the Applicant believes that the above-identified application is in condition for allowance and henceforth respectfully solicits the Examiner to allow the application. If the Examiner believes a telephone conference might expedite the

allowance of this application, the Applicant respectfully requests that the Examiner call the undersigned, Applicant's attorney, at the following telephone number: (516) 742-4343.

Respectfully submitted,

  
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